

Appn. Number 10/705,840 Guyon et al.
Amendment dated Thursday, 04/13/2006
Reply to Office Action dated 01/24/2006

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REMARKS – General

In the specification Applicants have amended their specification to remove the term “circumferential arcuate taper” and replace it with “rounded rolling surface” to more definitely describe the item. Other editorial changes have been made to better explain the construction and operation of the invention. No new subject matter has been added.

In the claims Applicants have amended their claims to define the invention more particularly and distinctly so as to overcome the rejections and define the invention patentability over the cited references.

Claims 1 to 18 were pending prior to the amendments contained herein. Claims 1 to 17 remain in this application. The Office Action mailed on 01/24/2006 rejected claim 1 under 35 U.S.C. 102(e) and claims 2, 3, 4, 5, 6, 7, 16 and 17 under 35 USC 103(a). Claims 8 to 15 were found to have allowable subject matter but were objected to as being dependent upon a rejected base claim. Claim 18 was cancelled. In light of the earlier Office Action a reply to which was filed on November 6, 2005 Applicants retain the right to present claim 18 in a divisional application.

Applicants appreciate the review and comments set out the by Examiner in the Office Action.

Claims Rejected Under USC 35 102(e)

The Office Action rejects Applicants' independent claim 1 on the grounds that it is anticipated by Riley. Claim 1 has been amended herein. Applicants respectfully submit that their amended claim 1 is patentably distinguishable over Riley.

The Riley Patent

Riley discloses an expandable shoe having a rigid front portion and a rigid rear portion joined by a middle portion being an elastic bridge. When the in line skate is inserted into the shoe the front portion takes the front rollers and the back portion takes the back rollers and the front and back

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portions are biased together by the elastic bridge thereby holding the shoe on the in line skate. The elastic middle portion can be separately molded or integrally molded. The middle portion does not have ground contact. Generally the front portion is identical to the rear portion except to accommodate in line skates having rear brake assemblies.

The Applicants' Invention

The Applicants' invention discloses an in line skate guard that comprises a unitary elongated body. This body is fabricated from a three part family mold. The front portion mold and the rear portion mold are consistent between variants of the in line skate guard. The middle portion mold has a variable length so that it can be interchanged prior to molding to accommodate to differing skate guard lengths. The molds are joined to form the mold for the elongate body. The body bottom surface contacts the ground at angles that are adapted to accommodate a natural walking gait.

The "Lugs" are not taught by Riley.

The Office Action states that Riley includes "first and second (left and right) laterally spaced upwardly extending lugs (51, note figure 1) which define a space there-between". Applicants submit that this is not the case.

Referring to Riley Figure 1, item 50 is identified as "blocking means". This feature is described in Column 4 line 51 et seq. 33:

The wheel-shaped receiving channel extends the length of base member 10 with blocking means 50 disposed at the end. Blocking means 50 is formed by the upward curvature of the wheel-receiving channel (40) and is concavely curved to generally conform to the curvature of the in line skate wheel when placed in the wheel-receiving channel.

In Figure 2A Riley distinguishes between front blocking means (51) and rear blocking means (52). This is described in Column 5 line 46 et seq.:

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Base member 10 can be utilized as the front shoe portion 11 and rear shoe portion 12 of an expandable shoe as illustrated in FIG 2a. This type of shoe would be suitable for use with in line skates having no rear brake assembly. The front blocking means 51 and rear blocking means 52 could be identically constructed or different but in either case blocking means 51 and 52 would extend upwardly from the wheel-receiving channel at least 27.5 degrees above the horizontal plane of the axes of the in line skate wheels.

Riley at Column 3 line 22 et seq describes blocking means:

The blocking means extends upwardly from said channel at least 27.5 degrees above the horizontal plane of the axes of the skate wheels and is concavely curved so as to generally conform to the curvature, i.e. circumference, of the front wheel of the in line skate.

Therefore a single (front or rear) blocking means disclosed in Riley is a single upwardly extended portion that is adapted to enclose around a substantial portion of the front (or rear) wheel of the in line skate. It is enclosed like the ends of a canoe. All of the figures in Riley do not disclose first and second opposite and parallel lug as disclosed in Applicants' invention.

The front portion lugs disclosed in Applicants' invention are described in paragraph [0071]:

Still referring to Figure 4, there is shown a front sectional view of front portion (44). The front portion (44) has opposite and parallel first (52) and second (54) lugs projecting upwards. The lugs are used to mount means to fix our invention to the in line skate as more fully explained below. The first (52) and second (54) lugs having inside surfaces (56) and (58) respectively and outside surfaces (60) and (62) respectively. The lugs have curved front surfaces (64) and (66). In another embodiment of the invention these front surfaces may be flat and vertical. Each of the lugs further has arcuate top surfaces (70) and (72) respectively and incurvate rear surfaces (74) and (76). The first (52) and second (54)

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lugs are opposed between gap (78). As the rollers of the in line skate are jammed into our in line skate guard, the walls of the skate guard flex outwards to receive the width of the rollers and then, once the rollers are inserted into the groove, the walls will compress or pinch against the sides of the rollers holding them immobile.

Similarly, in Applicants' invention, there are rear lugs on the rear portion of the in line skate guard as described in paragraph [0074]:

Still referring to Figure 5, there is shown a rear sectional view of rear portion (48). The rear portion (48) has opposite and parallel third (82) and fourth (84) lugs projecting upwards. The lugs are adapted to mount fixing means to fix our invention to the in line skate as more fully explained below. The third (82) and fourth (84) rear portion lugs having inside surfaces (86) and (88) respectively and outside surfaces (90) and (92) respectively. The lugs have curved rear surfaces (94) and (96). In another embodiment of our invention, these surfaces may be flat vertical surfaces. Each of the lugs further has arcuate top surfaces (98) and (100) respectively and incurvate front surfaces (102) and (104). The rear portion third (82) and fourth (84) lugs are opposed between a gap (105). Gap (105) is adapted in width to receive brake spur (36). The width of the rear portion (48) is slightly larger than the width of front portion (44) in order to accommodate wider gap (105). This is illustrated in Figure 8.

Applicants submit that the lugs taught by their invention are not disclosed by Riley and are novel and inventive over Riley. The lugs exist to assist the wearer to jam the in line skate into the skate guard at any insertion angle and without having to stoop and handle the guard over the skate rollers. As shown in Applicants' Figure 4 and Figure 5, the lugs are adapted to grasp by pinching

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the front (or rear) skate rollers. This is not the case in Riley where the wearer has to first handle the front shoe portion over the front of the skate and then extend the elastic middle portion so that the rear shoe portion can be handled over the rear rollers of the skate. Furthermore Riley does not disclose a pinching action.

Applicants further submit that the lugs are patentably distinguishable so as to overcome the Office Action objection with respect to anticipation by Riley. Riley must teach each and every aspect of the Applicants' invention and fails to do so. Therefore, on this basis alone, the Office Action s102 objection should be withdrawn.

Riley does not teach a middle portion

The Office Action states that Riley discloses a middle portion. Riley discloses an expandable shoe having a front and rear shoe portion joined by a flexible bridge. The flexible bridge is described in Riley Column 5 line 55 et seq.:

Flexible bridge 60 as illustrated is a molded elastomeric elongated o-shaped piece; however, other designs can be utilized for this purpose. Whereas flexible bridge 60 has two extensible (stretchable) rail members 61, construction having fewer or more stretchable rail members can be employed. The only requirement is that the extensible rail members have sufficient elasticity so that under tension, front shoe portion 11 and rear portion 12 are pulled toward each other so that blocking means 51 disposed at the front of the shoe portion 11 and blocking means 52 disposed at the rear of the rear shoe portion 12 engage and bear against the front and rear wheel.....

Applicant submits that this flexible bridge is not analogous to the middle portion of their invention. The middle portion of Applicants' invention is described in amended paragraph [0077] as:

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Now referring to Figure 6, there is shown the middle portion (46) of the elongate body of our invention in side view and in cross section. Demarcation line (50) separating the front portion (44) from the middle portion (46) is shown as is demarcation line (80) separating the middle portion (46) from the rear portion (48). In the cross section view, there are shown the following features, some of which are more fully explained below. The middle portion (46) includes horizontal bottom portion (128) walls (151) and (153) defining groove (150). There is also illustrated the unique beveling of the inside of the groove (150). The top width (171) is adapted to accommodate the width of the rollers of the in line skate and to create a compressive or pinching relationship between the inside surfaces of the walls (163) and (165) and the side walls of rollers. Deeper within the groove are found bevels (160) and (162) that create a thinner width (173) at the bottom surface (167) of the groove. The beveled portions within our in line skate guard are adapted to accommodate the ~~circumferential-areuate-taper~~ rolling surface of the rollers. When the skate is placed within the skate guard the lower beveled portion of the groove will pinch against the sides of the ~~circumferential-areuate-taper~~ rolling surface of the rollers. As the roller wears with use and as the contact rolling surface of the roller with the running surface becomes flatter, the bottom surface of the groove is able to better contact bottom of the roller so as to hold it in an immobile configuration. Advantageously, the wearer of our invention may run while wearing in line skates with our invention attached. As the wearer runs, the rollers are forced deeply within the groove and thereby immobilizing the rollers.

It is evident from Figure 6 that the bottom portion of the middle portion is in contact with the ground. The middle portion has the following function as set out in paragraph [0082]:

The third contact surface (128) is horizontal and represents about 40% of the bottom surface of the elongate body. The third contact surface (128) is adapted to contact the walking surface and bear the wearer's weight in a stable manner during the foot flat phase of the walking gate.

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Therefore the middle portion of Applicants' invention has two functions; (1) to grasp the wheels of the in line skate in a pinching relationship; and, (2) to carry the weight of the wearer when walking on the flat bottom surface of the middle portion. Riley does not disclose a middle portion and so these functionalities are not disclosed by Riley. This feature is novel and inventive and is not anticipated by Riley.

Since Riley does not meet the claims of Applicants' invention nor suggest Applicants' invention nor enable one skilled in the art to achieve each and every element of Applicants' invention the Applicants request that the s.102 objection be withdrawn and this claim allowed.

Claim rejections under 35 USC § 103

The Office Action rejects Applicants' claims 2-4 as being unpatentable in light of Riley and Bunke.

Riley is described above.

The Bunke Patent

Bunke teaches a walking surface that may be attached to a ski boot. The Bunke device facilitates walking in a ski boot by including a series of roll points between the front and rear end of Bunke device and across the width of the Bunke device. These roll points are adapted to emulate the inward rolling motion of the foot.

The Office Action states that Bunke teaches the middle portion included in Applicants' invention but not disclosed by Riley and so it would be obvious to a person skilled in the art at the time of the invention to provide a horizontal plane as taught by Bunke in the central region of the Riley invention in order to support the foot while walking.

Applicants' claims 2-4 are not rendered obvious by Riley and Bunke

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In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or the references when combined) *must teach or suggest all the claim limitations*. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991) (Reversed district court holding of obviousness). Any *prima facie* conclusion of obviousness must be factually supported, and, if not met, the applicant is under no obligation to submit evidence of nonobviousness. With respect, the Applicants submit that these criteria are not met in the Office Action rejections.

Bunke is not analogous art.

In order for Bunke to be considered "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. [MPEP 2141.01(a)]. A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.

Applicants' invention addresses in line skate guards that enclose the rollers and permit walking. Without the in line skate guard walking while wearing in line skates is virtually impossible because of the rollers. Bunke discloses a walking surface for a ski boot adapted to provide a more comfortable gait for the wearer by inducing a rolling motion in the foot that includes an inward rolling motion. Unlike an in line skate, it is possible to walk in a ski boot without the Bunke device. A ski boot has no rollers and therefore solutions regarding walking in ski boot soles are not applicable to walking wearing in line skates. Therefore, Applicants state that Bunke is not

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analogous art and ought not to be cited against them. A person skilled in the art would not logically look to ski boot soles in order to solve problems in respect of in line skates having rollers.

Bunke falls into class 36: boots, shoes and leggings. Applicants' invention falls into class 280/825: scabbards for ice skates and in line skates. Bunke seeks to solve a problem relating to rigidity. Applicants seek to solve a problem relating to walking on rotating rollers. There is nothing logical in referring to boots in order to solve a walking problem associated with in line skates having rollers.

Applicants' claims 2-4 not rendered obvious by Bunke and Riley combined

In any event, Bunke combined with Riley fails to disclose all of the elements of Applicants' invention. The lugs of Applicant's invention are not disclosed by combining Bunke and Riley. The middle portion of Bunke is not grooved or adapted to receive roller wheels. The middle portion of Bunke is not flat as claimed in the Office Action. The Bunke figures clearly teach a front to back bottom surface profile that is cambered and a side to side bottom surface profile that is also curved to give a rotation to the walking gait. The inside walls of the middle portion of Bunke are not adapted to pinch the sides of the boot for boot retention as this is resolved by front and rear retaining lips that engage the projections on the ski boot. Whereas, the inside walls of the grooves of the Applicants' invention are adapted to pinch the rollers to retain them within the guards. Bunke is made from an elastomeric material that can stretch by hand forces in order to stretch it over the boot. This feature teaches away from Applicants' invention which requires a resilient moldable material such as thermo polyurethane (TPU). The ideal density of applicants' invention is about that of a running shoe sole. Bunke appears to be much softer. When Bunke is combined with Riley the result would not meet the Applicants' claims and would produce an inoperative device. With respect, there is nothing in Bunke that would suggest applicability to a roller skate. Combining Bunke with Riley does not produce a working skate guard because the material used in Bunke is not sufficiently elastic to stretch to the degree required by Riley to cover the front and rear rollers. Adding a middle portion to Riley would only complicate the Riley

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design and make it more expensive to manufacture and purchase. Therefore, it is illogical to follow any suggestion that would increase the price of a product or complicate its manufacture from what was originally proposed.

For these reasons, Applicants' request that the s103 objection to their claims 2-4 be withdrawn and that these claims be allowed.

Applicants' claims 5-7 are not rendered obvious by Riley, Bunke and Schneider

The Schneider Patent

Schneider discloses an in line skate walking attachment that is a stretchable rubber-like sheath pulled over the rollers. A strap is included to tighten the sheath around the rollers. There are gaps (110) and (108) in the lower ground contacting surface of the sheath and the ground contacting surface is horizontal along its entire length.

Neither Riley, Bunke nor Schneider discloses the lugs of the Applicants' invention and therefore all of the claims of the Applicants' invention are not met by this combination.

Riley and Schneider both have too much flexibility to permit a wearer to place either device on an in line skate while standing in them. The wearer must sit down and then handle the Riley and Schneider devices over the front then rear rollers of the in line skate.

The walking attachment disclosed by Schneider is analogous to a rubber boot that is stretched over the in line skate rollers. Therefore, combining Riley and Schneider does not yield the supporting middle section disclosed by Applicants. Even Bunke does not possess sufficient rigidity to provide the walking security and safety over a width that is not much wider than the rollers.

Schneider and Riley both have horizontal bottom surfaces and therefore do not simulate a walking gait. Bunke does have a bottom surface like that simulates a walking gait analogous to that

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disclosed by Applicants. In Bunke that is achieved by a plurality of roll points along the bottom surface of the ski boot sole. These roll points are distributed linearly as well as laterally along the sole as shown in Bunke Figure 11. Such roll points could not be included in Applicants' invention because the bottom surface of the in line skate guard is too narrow. Therefore, combining Bunke with Riley and Schneider would not achieve the functionality of Applicants' invention.

The Office Action asserts that it would be obvious to a person of ordinary skill in the art to modify Riley in light of Burke to produce a skate guard from flexible material with two-width groove as suggested by Schneider for accommodating rollers of differing widths so as to allow the guard to work with a greater number of different types of skates. The Office Action makes reference to Figure 22 of Schneider which is described at Column 6 Line 23 et seq.:

The lower sidewalls 117 and 119, as shown in FIG.22, are spaced apart and form a slot 121 between them adapted to receive the wheels of the skate. The upper sidewalls 121 and 123 are jogged out to a wider slot, to fit over the wheel frame in Figure 17.

Contrary to what is stated in the Office Action, the two widths described in Schneider above are not adapted to accommodate differing roller widths, rather, the lower width accommodates the roller and the upper width accommodates the frame. Schneider is able to accommodate different widths because it is made from rubber and therefore able to stretch over a variety of in line skates. Furthermore, the widths are not grooves but simple voids created by dipping a mold into a suitable liquid PVC material. [Column 6 Lines 31-35]. There is little or no pinching or gripping action on the part of the Schneider attachment walls on the sides of the rollers once inserted into the attachment.

Referring to Figures 4, 5, and 6 of Applicants' invention, the elongate body is formed by joining the molds of each of the front, middle and rear portions to form a family mold. The elongate body is formed from resilient material that is flexible but not elastic and does not stretch to the extent necessary in Schneider and Bunke. The groove within the elongate body is a two-width groove

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adapted to pinch the roller width and the running surface of the rollers once they are inserted into the skate guard. As explained in amended paragraph [0077] in respect of Figure 6:

[0077] Now referring to Figure 6, there is shown the middle portion (46) of the elongate body of our invention in side view and in cross section. Demarcation line (50) separating the front portion (44) from the middle portion (46) is shown as is demarcation line (80) separating the middle portion (46) from the rear portion (48). In the cross section view, there are shown the following features, some of which are more fully explained below. The middle portion (46) includes horizontal bottom portion (128) walls (151) and (153) defining groove (150). There is also illustrated the unique beveling of the inside of the groove (150). The top width (171) is adapted to accommodate the width of the rollers of the in line skate and to create a compressive or pinching relationship between the inside surfaces of the walls (163) and (165) and the side walls of rollers. Deeper within the groove are found bevels (160) and (162) that create a thinner width (173) at the bottom surface (167) of the groove. The beveled portions within our in line skate guard are adapted to accommodate the ~~circumferential arcuate taper~~ rounded rolling surface of the rollers. When the skate is placed within the skate guard the lower beveled portion of the groove will pinch against the sides of the ~~circumferential arcuate taper~~ rounded rolling surface of the rollers. ~~As the roller wears with use and as the contact~~ As the rounded rolling surface of the roller wears down with use with the running surface becomes flatter, ~~the bottom surface of the~~ the pinching action of the beveled portion continues to accommodate roller wear over time and holds the rollers immobile regardless of their wear. ~~groove is able to better contact bottom of the roller so as to hold it in an immobile~~ configuration. Advantageously, the harder the skate guard is used the more secure the skate guard is on the in line skate. For example, the wearer of our invention skate guard may run while wearing in line skates with our invention attached. As the wearer runs, the rollers are forced deeply within the groove and thereby further immobilizing the rollers.

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The pinching relationship between the rollers and the walls of the groove does not exist in the Schneider attachment. The dual-width groove in Applicants' invention is adapted to conform to the widths of the roller from the axis to the running surface of the roller. The frame sits outside of the skate guard. In Schneider the dual-width is adapted to conform to the roller in the lower part and the frame in the upper part. The frame sits within the Schneider attachment and the bevel in Schneider is there to accommodate the width of the frame. The bevel or the two-width pocket in Schneider has nothing to do with the width of the skate rollers.

Therefore, combining Schneider with Riley as modified by Bunke would not achieve the elements claimed in the Applicants' invention for the following reasons:

1. The combination does not yield the lugs of the Applicants' invention.
2. Constructing Riley out of rubber material would yield an inoperative invention because the elasticity would not permit the Riley device to effectively hold on to the front and rear wheels. Riley depends on tension between a rigid front and rear section to remain in place.
3. Skate rollers all tend to be one width and so there is little reason to accommodate varying widths of roller wheels as suggested in the office action.
4. Combining Riley and Schneider would not achieve the pinching action in Applicants' invention that retains the rollers within the skate guard.
5. Bunke does not disclose a horizontal plane for the middle bottom contact portion of the skate guard.

Applicants submit that the combined references as suggested by the Office Action do not disclose all of the elements of the Applicants' claims. Furthermore, there is no logical reason for combining Bunke with Riley or Schneider because Bunke is non-analogous art. Additionally, the combined references would not achieve the functionality of Applicants' invention. For these reasons, Applicants' state that their claims 5-7 disclose patentable subject matter that is novel and inventive over the cited references separately and in combination. They respectfully request that the objections to their claims 5-7 be withdrawn and that these claims be allowed.

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Applicant' claims 16-17 are not rendered obvious by Bunke.

As above, Applicants' assert that Bunke is not analogous art and should not be cited against them.

Bunke seeks to copy the motion of the foot in a much more complex manner than described in the Office Action. The action of the foot is well described in Bunke at Column 4 Line 58 et seq. Additionally, Bunke is designed to accommodate a movement of the foot medially towards the centre of the body. This phenomenon is known as the "path of resultants" which is depicted in Figure 11. Bunke seeks to imitate this path in its design. To do this Bunke includes five roll points with beveling of the sole. The roll points are depicted in Figure 10 Items 50a to 50e. These points are not linear and they are not located on the same plane. Two of the roll points are offset to simulate the medial movement of the foot. This is described at Column 8 Lines 28-52.

The Office Action states that there is nothing in Bunke that fails to explicitly teach that its sole structure is unusable with an in line skate guard. With respect, the Applicants' disagree. In this case, Bunke is indeed restricted to ski boots because its solution requires the broad flat surface of a ski boot sole to give effect to the required rolling motion of the foot. The movement of the foot as described in Bunke and depicted in Figure 11 needs the entire width of the foot to occur. A sole having a width less than the width of the sole of a foot would not be adaptable to the solution taught in Bunke. Therefore, Bunke does exclude its application to Applicants' invention.

Applicants' invention does not and cannot emulate the medial roll of the foot because the ground contact surface of their in line skate guard is too narrow. Furthermore, the narrow ground contact of the in line skate guard makes dangerous any medial movement of the wearer's foot which could result in a loss of balance. The walking movement while wearing Applicants' in line skate guard is more like walking down a narrow railway rail and not a broad surface. Rolling motion of the foot cannot be accommodated the obvious reason that wearer would quickly loose balance.

Therefore, what the Applicants' seek to emulate with the design of their skate guard is the walking gait described in their specification at page 13 lines 5 et seq. that does not include a medial movement of the foot inwards. This can be accomplished over a narrow elongated surface such as Applicants' skate guard. A similar gait can be accomplished over the sole of a ski boot. However,

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the big difference is that the gait described in Bunke cannot be emulated over a narrow elongated surface. It requires a sole having a length and width that approximates a human foot sole.

For these reasons, the Applicants' submit that the assertions made in the Office Action with respect to claims 16-17 are incorrect. It would not be obvious to a person skilled in the art with knowledge of Bunke to apply the solution taught by Bunke to the problem of emulating a more human gait while wearing in line skate guards. For the reasons cited above, Applicants' respectfully state that their claims 16-17 are novel and inventive over Bunke and request withdrawal of the objection and allowance of these claims.

Allowable Subject Matter

The Office Action has identified claims 8-15 as allowable if rewritten in independent form. Applicants, for the reasons cited above, state that the base claim and intervening claims as amended herein are allowable and that these claims need not be rewritten in independent form. Applicants' have amended claims 11, 13 and 14 to correct the informalities identified in the Office Action.

Conclusion

In view of the forgoing amendments and accompanying arguments, Applicants respectfully request allowance of their claims 1-17 as amended.

If there are any matters concerning this application that could be cleared up in a telephone conversation, please contact the undersigned at (250) 418 3250.

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The assistance and helpful suggestions set out by the Examiner in this Office Action are greatly appreciated.

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